

REMARKS

Claims 15-36 are pending in the present application. Claim 15 has been amended to specify the orders that are to be included as non-crop pests, and claims 16, 17, and 23-26 have been cancelled. Support for the amendment to claim 15 can be found in the claims themselves and at least on page 5, line 37 to page 6, line 7 of the as-filed specification. Additionally, the specification has been amended. In particular, the paragraph starting at page 6, line 40 has been amended to remove the term "tree" from the list of non-living organic materials.

Reexamination of the application and reconsideration of the rejections and objections are respectfully requested in view of the above amendments and the following remarks, which follow the order set forth in the Office Action.

Rejection under 35 USC § 112

Claims 18 and 21-22 were rejected under 35 USC §112, second paragraph, because the phrase "non-living organic materials" is allegedly indefinite. Applicants respectfully traverse. The Office Action rejected inclusion of the term "trees" as a non-living organic material. Applicants have amended the specification as detailed above to remove the term "trees" from the listing of exemplary non-living organic material. Based on the foregoing, Applicants submit that the phrase "non-living organic material" is not indefinite. Accordingly, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

Rejection under 35 USC §102

Claims 15-17, 19-20, and 23-26 are rejected under 35 USC §102(b) as being anticipated by Furch et al., EP 0604798, ("Furch"). Applicants respectfully traverse.

As amended, claim 15 recites a method for controlling non-crop pests comprising contacting the non-crop pests or food supply, habitat, breeding grounds or their locus with a pesticidally effective amount of a new non-crop pest control agent, i.e., a compound of formula I. The non-crop pests are selected from the group consisting of the orders Isoptera, Blattaria (Blattodea), Diptera, Hymenoptera, Siphonaptera, and Parasitiformes.

In contrast, Furch relates to plant protection in the agricultural field and discloses the insecticidal and acaricidal activity of N-arylhydrazine derivatives and other compounds against crop pests of the Coleoptera, Lepidoptera, and Acarina orders. Notably, these orders

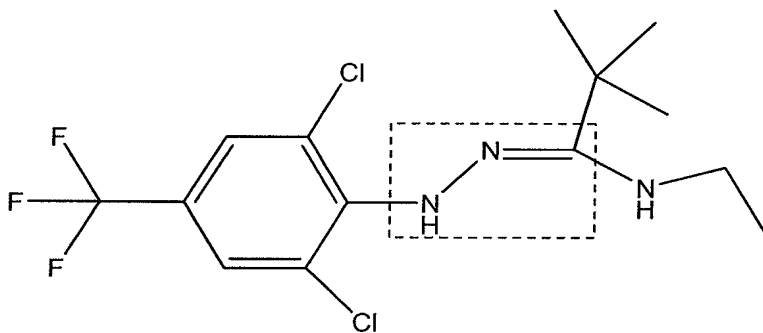
are not included in the listing of non-crop pests in amended claim 15. Additionally, the only disclosure in Furch wherein amidrazones of Formula I are shown to possess insecticidal activity are in Table IV on pages 37 to 40. However, none of the species tested, namely the southern armyworm, the two-spotted spider mite, and the southern corn rootworm, are classified in the orders recited in amended claim 15. Because Furch fails to disclose every limitation of the method of amended claim 15, Applicants submit that claim 15 is novel over Furch. Accordingly, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

Rejection under 35 USC §103

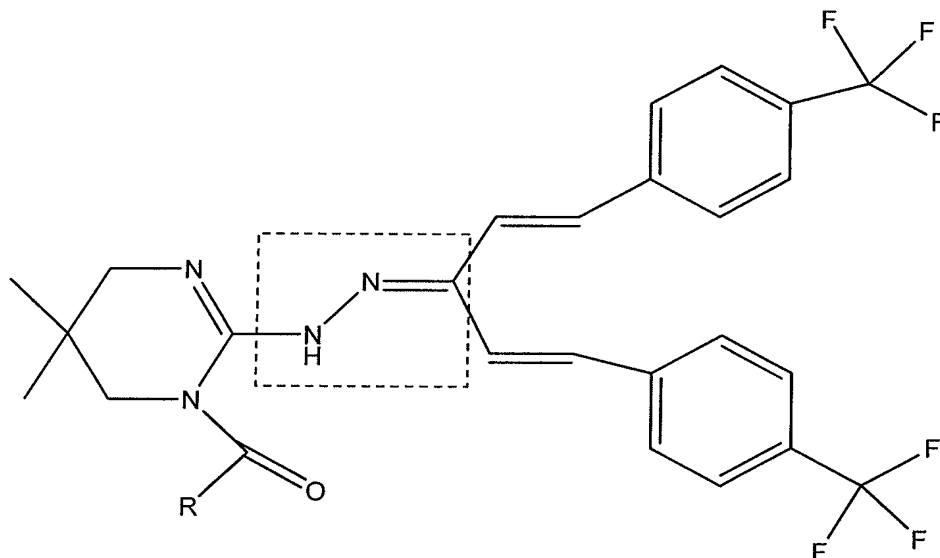
Claims 18, 21-22, and 27-36 are rejected under 35 USC §103(a) as being allegedly unpatentable over Furch in view of Drabb, Jr., U.S. Patent No. 4,152,436, ("Drabb"). Applicants respectfully traverse.

Drabb discloses the use of acylated pentadienone hydrazones to control insects and ants, and Furch discloses a method of plant protection against crop pests using a broad range of N-arylhydrazine derivatives of the general Formula I. The hydrazones disclosed in Drabb are structurally significantly different from the N-arylhydrazine derivatives disclosed in Furch and the amidrazones described in the instant application. Examples of representative structures are shown below.

Furch representative structure:



Drabb representative structure:



While the two compounds share the common element shown in the boxed-in areas, this is the only similarity in structure between the compounds. Based on the divergent structures of Drabb and Furch, one of ordinary skill in the art would have no reason to replace the Drabb compounds in the disclosed Drabb method with the compounds of Furch because such person would have no expectation of success in doing so.

Additionally, the compounds of Drabb and Furch have a completely different mode of action. As such, one of ordinary skill in the art would be more unlikely to replace the compounds of Drabb with the compounds of Furch in the methods of Drabb. Furch discloses the use of amidrazone compounds to control crop pests. As discussed in detail in the specification, the activity of a certain compound against crop pests does not generally suggest activity of the same compound against non-crop pests. See, p. 4-5. Crop pest control is a part of plant protection whereas, in contrast, non-crop pest control relates to completely different objectives, such as, for example, the protection of non-living organic materials, hygiene, and disease prevention. In addition, treatment methods for crop pests and non-crop pests are generally different. For example, piercing-sucking crop pests or biting crop pests feed on the green parts of the plant. Thus, in order to control such pests, substances that can be introduced into the plant parts by virtue of their water-solubility are favorable. In contrast, non-crop pests, for example, feed on non-living organic materials such as the homes, clothing, and food of human beings and animals. Such non-crop pests are controlled by

mostly water-insoluble pesticides in baiting systems or by direct contact. Accordingly, since there are different requirements for insecticides used to control non-crop pests and crop pests, one of skill in the art would not predict that a compound that is suitable for crop protection (the compounds of Furch) would show activity against non-crop pests.

Because one of ordinary skill in the art would have no expectation of success in replacing the compounds of Drabb with the compounds of Furch in the methods of Drabb, Applicants submit that claims 18, 21-22, and 27-36 are not obvious over Furch in combination with Drabb.

With further regard to claims 27-29, claim 27 specifies the non-crop pests against which non-living organic materials are being protected as selected from the group consisting of the class Diplopoda and of the orders Isoptera, Diptera, Blattaria (Blattodea), Dermaptera, Hemiptera, Hymenoptera, Orthoptera, and Thysanura. Given the recitation of claim 27, Applicants submit that even if, *arguendo*, one of ordinary skill in the art replaced the acylated pentadienone hydrazones of Drabb with the N-arylhydrazine derivatives of Furch in the methods of Drabb, the method of claims 27-29 would still not be obvious in view of the resulting method. As discussed in detail above, Furch fails to disclose that the compounds disclosed therein have any insecticidal activity for any of the class or orders recited in claim 27. As such, one of ordinary skill in the art would have no reason to believe that the Furch compounds would have any insecticidal activity against the recited class and/or orders if used in the methods of Drabb. Accordingly, Applicants again submit that claims 27-29 are not obvious in view of the combination of Furch and Drabb.

Based on the foregoing, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

For the foregoing reasons, claims 15-18, 19-22, and 27-36 are considered allowable. A Notice to this effect is respectfully requested. If any questions remain, the Examiner is invited to contact the undersigned at the number given below.

Respectfully submitted,

BRINKS HOFER GILSON & LIONE

Date: 2/27/09

By: Allyn B. Rhodes
Allyn B. Rhodes
Registration No. 56,745

2801 Slater Road, Suite 120
Morrisville, NC 27560
919.481.1111
662187v1